UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECLAIM THE RECORDS, ALEC FERRETTI, ALEX CALZARETH, and RICH VENEZIA
 	
                              Plaintiffs,
 	
    - against -
 	
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,
 	
                              Defendant.
	23 Civ. 01997 (PAE)

DECLARATION OF BENJAMIN MEYERS

I, BENJAMIN MEYERS, hereby make the following declaration in support of Plaintiffs'

cross-motion for summary judgment in the above-captioned case under 28 U.S.C. §1746.

1.   I am of counsel to the firm Beldock Levine & Hoffman LLP, attorneys for the

Plaintiffs in the above-captioned case, and I am familiar with the facts and circumstances stated

herein, based on my personal knowledge and on my review of the case file in this matter. I submit

this declaration in opposition to Defendant's Motion to Dismiss, for Summary Judgment, or for

Severance, and in support of Plaintiffs' Cross-Motion for Summary Judgment pursuant to Fed. R.

Civ. P. 56.

2.   Attached hereto are true and accurate copies of the following exhibits:

a.   **Exhibit 1** is a spreadsheet showing the following data for each of the 89

FOIA requests at issue in the present case:

Col. A: Request number in the Complaint (Dkt. 1)

Col. B: USCIS Control Number

Col. C: Text of the request

Col. D: Track applied (1 = simple; 2 = complex)

Col. E: Date of submission of the request

Col. F: Date of response to request, if any

Col. G: Number of working days[1] from submission of request to March 8, 2023, the date of filing this action

Col. H: Number of working days from submission of request to date of response, if any

Col. I: Number of working days from submission of request to August 9, 2024, the date of Defendant's motion (if no request)

  b. **Exhibit 2** is the 13th Declaration of Tammy M. Meckley filed as Docket No. 155-1 in *Nightingale v. U.S. Citizenship and Immigration Services*, Northern District of California Case No. 3:19-cv-03512-WHO.

  c. **Exhibit 3** is an excerpt of pages 1-4 from the "Case Create Overview" file obtained from U.S. Citizenship and Immigration Services, discussed *infra* at ¶¶11-12.[2]

  d. **Exhibit 4** is an excerpt of pages 1-5 and 22-24 from the "U.S. Citizenship and Immigration Services Freedom of Information Act and Privacy Act Case Create Guide", dated 1/19/2022, discussed *infra* at ¶¶11 and 13.[3]

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[1] Number of working days is calculated using the "=NETWORKDAYS" function in Microsoft Excel and the list of Federal holidays published by the U.S. Office of Personnel Management at https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=Historical-Data (accessed September 17, 2024).

[2] The full document may be downloaded from https://www.documentcloud.org/documents/23852394-case-create-overview, last accessed September 22, 2024.

[3] The full document may be downloaded from https://www.documentcloud.org/documents/23852390-guide-case-create, last accessed September 22, 2024.

Calculations of Number of A-Files Requested and Backlog in Fiscal Years 2020-2024

3.   Pursuant to the Order dated December 17, 2020 in *Nightingale v. U.S. Citizenship and Immigration Services*, Northern District of California Case No. 3:19-cv-03512-WHO (507 F.Supp.3d 1193), defendants in that case have filed quarterly compliance reports containing information regarding the number and percentage of A-File FOIA requests that were received, processed, and timely completed, along with the number of requests still pending beyond the statutory deadlines.

4.   The table below shows the relevant data given in the declarations filed with each of those compliance reports, and lists the date of each declaration, the docket number of the declaration, the location(s) in the declaration where the cited data is recited, the name of the declarant, and the required data: the number of A-File requests received in the preceding quarter, the number of A-File requests processed that quarter, the number of new A-File requests completed, the number of new A-File requests completed within the statutory time periods, the rate of timely completion, and the number of A-File requests remaining in the backlog. Additionally, it computes the sum of these figures for each approximate fiscal year by adding the December, March, June and September figures, while noting that these dates are out of phase with the actual Fiscal Year by 15 days (i.e., because the figures given in *Nightingale* are based on a September 15 through September 14 year, rather than an October 1 through September 30 year, the numbers here will vary slightly from the Fiscal Year totals used to calculated the figures in the FOIA Annual Reports).

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	Table 1: USCIS Compliance Reporting, 2020-2024, in *Nightingale v. USCIS et al.*, 3:19-cv-03512-WHO (N.D. Cal.)							
Date	*Nightingale* Docket Number and location(s) of data reported	USCIS Declarant	Number of A-File requests received	Number processed	Number of new requests completed	Number of new requests timely completed	Timely completion rate	Backlog
12/17/20	Dkt. 97-1, ¶8	Meckley						21,986
3/17/21	Dkt. 97-1, ¶10a-b, d	Meckley	49,001	68,812	32,588	23,488	72.0%	574
6/15/21	Dkt. 104-1, ¶6, 7c	Meckley	62,844	63,390	46,338	46,004	99.3%	244
9/15/21	Dkt 113-1, ¶6a, 8a	Meckley	67,918	64,669	47,965	47,551	99.1%	92
12/15/21	Dkt 119-1, ¶6, 8	Meckley	65,612	61,580	41,545	21,374	51.5%	2,978
3/15/22	Dkt. 125-1, ¶5, 6	Meckley	63,973	64,251	40,174	28,978	72.1%	120
6/15/22	Dkt. 132-1, ¶6	Meckley	80,000	73,390	49,551	29,852	60.3%	1,884
9/15/22	Dkt. 138-1, ¶5, 14	Meckley	84,484	88,325	57,385	31,915	55.6%	5,361
12/15/22	Dkt. 147-1, ¶6, 9	Meckley	84,423	96,857	69,652	69,212	99.4%	76
3/15/23	Dkt. 151-1, ¶7, 10	Meckley	85,909	82,699	67,807	67,731	99.9%	3
6/15/23	Dkt. 155-1 ,¶5, 6, 7, 10	Meckley	104,542	94,492	76,185	76,066	99.8%	6
9/15/23	Dkt. 156-1, ¶6-8, 10	Arnold	106,613	107,824	79,118	70,031	88.5%	2
12/15/23	Dkt. 163-1, ¶7, 10	Meckley	119,140	110,486	82,582	81,980	99.3%	10
3/22/24	Dkt. 167-1, ¶6-7, 9-10	Meckley	151,961	139,699	102,856	102,146	99.3%	11
6/17/24	Dkt. 171-1, ¶6, 9-10	Meckley	140,833	155,820	106,408	104,351	98.1%	14
9/16/24	Dkt. 173-1, ¶5, 8	Meckley	134,875	135,924	101,226	100,845	99.6%	22

Total Fiscal Year 2022 (approx)*	294,069	287,546	188,655	112,119
Total Fiscal Year 2023 (approx)	381,487	381,872	292,762	283,040
Total Fiscal Year 2024 (approx)	546,809	541,929	393,072	389,322

* Because FY runs Oct 1 through Sept 30, each of these figures is 15 days out of phase with the actual Fiscal Year

Calculations of Statistical Data Used in Plaintiffs' Papers

5.   In 2016, the DHS began making the raw data used in its Annual Reports available for public inspection. In order to scrutinize the figures presented in Defendant's papers, I downloaded the Fiscal Year ("FY") 2023 raw data from the DHS website, at https://www.dhs.gov/publication/annual-foia-report-raw-data. The following table(s) and analysis of the Agency's work all derive from this raw data.

Calculation and breakdown of backlogged requests in Fiscal Year 2023.

6.   The Declaration of James Baxley (Dkt. 42) presents statistics for the Agency's FOIA response and backlog rates in Fiscal Years 2020-2023 (*id*., ¶¶17-19). After receiving 391,969 requests and processing 384,311 requests, the backlog[4] of unprocessed and overdue requests for FY 2023 is given as 2,137 (*id.*, ¶¶18-19).

7.   These figures can be confirmed by filtering the FY23 raw data in the "Raw Data Requests" tab as follows: the total number of requests received is found by filtering Col. H, "Initial Received Date", to include only the months in FY23 (October 2022 through September 2023): 391,969 records. The total number of requests processed is found, after clearing the filter and starting again from the full data set, by filtering Col. M, "Closed Date", to include all dates in 2023 and October-December 2022: 384,585 records (this is a negligible .07% difference of 274 records from what is stated in the Baxley Declaration). The backlog can be calculated by filtering these results by Col. M, "Closed Date" to include only blank entries (33,305 records), then further filtering those results by Col. L, "Days Opened" for values greater than 30, the maximum number of days specified at 5 U.S.C.§552(a)(6)(A) and (B): 2,137 records.

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[4] The backlog is defined as "the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time for a response." FY23 FOIA Report at 6 (*downloadable at* http://www.dhs.gov/foia-annual-reports).

8.   The 2,137 backlogged requests can be further filtered by the prefix of the Request # in Col. A of the FY23 raw data, indicating to which USCIS FOIA queue the request is assigned. Of these 2,137 requests, 2,006 have the "COW" prefix, indicating the queue for SIG requests (see ¶¶12-14, *infra*); the remaining 131 backlogged requests bear prefixes indicating their distribution among four other queues. The following table shows the number of requests for each prefix in the FY23 data and how many of each are backlogged, and calculates the percentage of each prefix that is backlogged, and the percentage of the overall backlog of requests with each prefix:

Control # Prefix (queue)	# of records in FY23 raw data table	# of backlogs	% of this queue with backlog status	% of overall backlog with this prefix
NRC	408,734	76	0.02%	3.56%
COW	4,177	2,006	48.02%	93.87%
SMP	3,351	0		
MRC	1,532	0		
PFL	50	49	98.00%	2.29%
CNT	33	5	15.15%	0.23%
REM	5	0		
BL	2	0		
HQS	2	0		
ALF	1	0		
EB	1	1	100.00%	0.05%
SAF	1	0		
UNP	1	0		
TOTAL	417,890[5]	2,137[6]		100.00%

Table 2: Plaintiffs' Analysis of Backlogs in FY23 Raw Data

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[5] Note that this figure – 417,890 – is confirmed in the FY23 FOIA Report, p. 13, Chart A: Received, Processed and Pending FOIA Requests, as the sum of the USCIS Number of Requests Pending as of Start of Fiscal Year (25,921) plus the Number of Requests Received in Fiscal Year (391,969). Report available at http://www.dhs.gov/foia-annual-reports.

[6] Note that this figure – 2,137 – is confirmed in the FY23 FOIA Report, p. 30, Chart D (2), Comparison of Backlogged Requests from Previous and Current Annual Report, USCIS Number of Backlogged Requests as of End of the Fiscal Year from Current Annual Report.

9.   Of the 2,006 COW-prefixed backlogged requests in the FY23 data, the number of working days each request has been open as of the end of the fiscal year ranges from 31 to 1,510. The average number of working days open for these requests was 382, calculated using the FY23 Raw Data by filtering Col. L, "Days Open" to greater-than-30 and Col. A, "Request #" to COW and then using the Excel formula "=SUBTOTAL(1,L889:L375103)".

10.   At the end of FY23, 1,671 of these records had been open for 100 or more working days, and 605 of these records had been open for 500 or more working days. The following table shows the number of these backlogged records broken down by number of working days in 100-day increments and as a percentage of the total backlog in the COW queue, calculated using the FY23 Raw Data, calculated by filtering the FY23 raw data, Col. A, "Request #" to COW (4,177 records), then filtering Col. M, "Closed Date" to show blank entries only (2,156 records), and then filtering Col. L, "Days Open", to Greater Than 30 (2,006 records) and sorting the results in descending order.

Number of working days open	number of requests	% of COW queue backlog
1000 or more	92	4.6%
900 - 999	66	3.3%
800-899	58	2.9%
700-799	88	4.4%
600-699	147	7.3%
500-599	154	7.7%
400-499	257	12.8%
300-399	178	8.9%
200-299	199	9.9%
100-199	432	21.5%
31-99	335	16.7%
Total backlogged COW requests	2,006	100.0%

**Table 3: Plaintiffs' Analysis of Distribution of
Backlogged Requests with COW prefix
in FY23 Raw Data by number of working days open**

Sources of internal USCIS documents showing
COW prefix indicates assignment to SIG queue

11.   The International Refugee Assistance Project ("IRAP"), a non-profit legal advocacy organization based in New York, brought an action against the USCIS in the Southern District of New York on November 17, 2021. *See International Refugee Assistance Project v. U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, and U.S. Department of State*, Civil Action No. 1:21-cv-09519. Plaintiffs there sought an order for the production of records responsive to a FOIA request for, among other things, all training materials used by the USCIS in their processing of FOIA requests (*see id*., Dkt. 1-2, FOIA request to USCIS dated 8/20/2021). In the course of that litigation, IRAP reached an agreement with the USCIS for the production of the documents requested (*see id.*, Dkts. 24 and 36, status updates dated March 4, 2022 and January 27, 2023). Subsequently, on June 18-19, 2023, IRAP released the documents received from USCIS on a public website[7], and discussed the case and the documents produced through it on their own website.[8]

12.   **Exhibit 3,** pages excerpted from the "Case Create Overview" file, at pages 1-2, provides an overview of SIG, with examples of Significant FOIA Requests On page 2, in instructing the user on how to receive a SIG request, it states that SIG cases are put into the COW queue for processing:

> 1. Verify request is a SIG case.
>
> 2. If a SIG request move from NRC queue to COW case create queue
>
> 3. Reassign the Case Creator to either yourself or ensure no one is

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[7] https://www.documentcloud.org/app?q=%2Bproject%3Ameta-foia-213575%20, last accessed September 22, 2024.

[8] https://refugeerights.org/news-resources/foia-behind-the-scenes-how-do-uscis-and-the-state-department-process-immigration-related-requests, last accessed September 22, 2024.

selected to add it to the COW Case Create queue

4. Reply to the case creator/processor, CC case creator/processor's supervisor with the new COW control number if there is one.

13.   **Exhibit 4,** pages excerpted from the "U.S. Citizenship and Immigration Services Freedom of Information Act and Privacy Act Case Create Guide", dated 1/19/2022, discusses at pages 22-23 the Significant Interest Group. In the section on page 23 where it instructs the user on how to handle requests understood to come within the SIG's scope, the document explains that SIG requests are transferred to the COW queue: "the FOIA/PA Assistant sends an email to SIG with the new child case number so that it can be transferred toe SIG (COW Queue)."

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed in New York, NY on this 4th day of October, 2024.

BENJAMIN MEYERS

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